IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.676 OF 2004
IN
ARBITRATION PETITION NO.197 OF 2004

Tata Finance Limited .. Appellant.
V/s.
The Pharmaceutical Products of India Limited .. Respondent.

Mr.Dinesh Purandare i/b. Kartikeya & Associates for the appellant.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 26TH OCTOBER, 2004.

P.C. :

Heard Mr.Dinesh Purandare, the learned counsel for the appellant and perused the impugned order.

2. The learned counsel for the appellant strenuously urged that the learned single Judge ought to have granted an interim order in favour of the appellant and there was no impediment in passing the appropriate interim order under Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'Act of 1996') merely because the respondent was sick industrial undertaking and the proceeding in relation thereto are pending before the BIFR.

3. It is true that an award has been made by the Arbitral Tribunal in favour of the present appellant and that there being no petition challenging the award, the said award has become decree. However, it is not in dispute that presently the decree is non-executable because of the bar under Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short 'SICA'). The expression 'at any point after making the arbitral award but before it is enforced in accordance with Section 36' occurring in Section 9 obviously means that if a party applies to the Court for interim measure at any time after making the arbitral award, such arbitral award could be enforced as decree under Section 36 of the Act of 1996. By virtue of Section 22 of SICA, the award which has been passed in favour of the appellant though is a decree cannot be enforced presently in accordance with Section 36 and in that event obviously no interim order contemplated under Section 9 could be passed. The suspension of the execution proceedings under Section 22 of SICA would obviously embrace within itself the suspension of interim measure under Section 9. The impugned order, therefore, cannot be faulted.

4. The learned counsel for the appellant relied upon our order dated August 10, 2004 passed in Appeal No.429 of 2004, GSL (India) Limited V/s. Tata Finance Limited. However, we find that the issue that is posed before us was not in issue specifically in that case and, accordingly, that order has no application.

5. The appeal is, accordingly, dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)